

DOJ Releases FY 2021 False Claims Act Recoveries: A Record-Shattering Year for Health Care and Life Sciences Enforcement, with Over \$5 Billion Collected

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On February 1, 2022, the U.S. Department of Justice (DOJ) [released](#) its annual False Claims Act (FCA) enforcement statistics for fiscal year (FY) 2021.^[1]

With collections amounting to \$5.6 billion, FY 2021 marks DOJ's largest annual total FCA recovery since FY 2014, and more than twice the \$2.3 billion received in FY 2020. FY 2021 was also a record-shattering year for DOJ as it relates to health care fraud enforcement; over \$5 billion (90% of the total) was obtained from cases pursued against individuals and entities in the health care and life sciences industries.

RECORD-SHATTERING YEAR FOR HEALTH CARE AND LIFE SCIENCES RECOVERIES

Largely due to blockbuster settlements with prescription opioid manufacturers (including a \$2.8 billion resolution with one opioid manufacturer), DOJ recorded a record-shattering \$5.1 billion in settlements and judgments, eclipsing the \$1.9 billion recovered in FY 2020, from the health care industry.

Marking another record, DOJ's health care recoveries in FY 2021 in non-*qui tam* actions (\$3.6 billion) exceeded total *qui tam* recoveries, indeed, more than doubling that recovery (\$1.5 billion).

DOJ's press release specifically referenced recoveries in connection with specific health care enforcement priorities, including billing for unnecessary medical services, solicitation or payment of kickbacks to induce the purchase of goods or services paid for by federal health care programs, and risk adjustment fraud related to Medicare Advantage programs.

WHISTLEBLOWER ACTIONS AND AWARDS REACH DECADE LOW

Whistleblowers (known as “relators” under the FCA) filed 598 new actions under the *qui tam* provisions of the FCA in FY 2021, a decrease from the 675 actions filed in FY 2020, and the lowest number of filings since FY 2010. Of the 598 *qui tam* cases filed in FY 2021, 388 were health care-related (65%), the lowest number of health care-related *qui tam* cases filed since FY 2010.

New FCA cases initiated by DOJ (known as “non-*qui tam* cases”) declined moderately in FY 2021, where DOJ filed 203 new cases as compared to 259 new cases in FY 2020.

Total awards to relators also fell in FY 2021 to the lowest number in over a decade. According to DOJ’s statistics, the government paid out \$238 million to relators in FY 2021, the lowest number since FY 2008.

INCREASE IN RECOVERIES FROM DECLINED QUI TAM CASES

DOJ’s FY 2021 enforcement statistics also suggest increasing exposure in declined *qui tam* cases where relators pursue FCA cases without DOJ’s intervention. The \$479 million collected in FY 2021 is the third largest in reported history and over double the recovery from FY 2020. As it relates to the health care and life sciences industries, the \$452 million collected in FY 2021 is the largest recovery since FY 2015 and the second largest recovery in reported history.

KEY TAKEAWAYS

Amidst the challenges associated with the ongoing COVID-19 pandemic, DOJ’s enforcement statistics demonstrate that enforcement activity has not wavered, especially as it relates to the health care and life sciences industries.

With a record-shattering year for DOJ recoveries stemming from enforcement against the health care and life sciences industries, regulated entities need to be increasingly diligent, both in ensuring comprehensive and effective compliance programs and in preparing to aggressively defend against any investigations and litigation that may arise out of government and *qui tam*-initiated fraud allegations.

^[1] DOJ’s FY 2021 is for the period of October 1, 2020 to September 30, 2021.

Nija Chappel also contributed to this article.

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